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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,486	07/03/2003	Michael Mueller	7296-2	4437

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/613,486	<b>Applicant(s)</b> MUELLER ET AL.	
	<b>Examiner</b> Jennifer E. Novosad	<b>Art Unit</b> 3634	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This non-final Office action is in response to the amendment filed March 3, 2006 by which claims 1-3, 6, and 7 were amended.

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The limitation "said stacking surface and support surface supporting a vertical stacking of articles of manufacture without assistance from other support structures" in lines 5-6 of claim 1 and lines 4-5 of claim 7 lacks proper support in the original specification (including the original claims and drawings). *In particular*, it would not be reasonably conveyed to one of ordinary skill in the art that the (stacking and support) surfaces could support articles "without assistance from other support structures".

*For example*, when the stacking device is disposed between articles, as shown in Figure 1A of the instant invention, such that a first article rests upon the top surface of the device and the bottom surface of the device rests on the top of a second article, the second article "assists" in supporting the device and the first article and thus is deemed (by the examiner) to constitute a

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"support structure". *Further*, when the stacking device is placed upon a surface such as a counter, or rack, or shelf, or the floor, as shown in Figure 3 of the instant invention, and a first article is placed on the top surface of the device, the bottom surface of the device is supported by the counter, rack, etc. and thus obtains assistance from other support structures, i.e., the shelf, rack, etc. *Thus*, not only is this newly added limitation lacking proper support in the original disclosure, this newly added limitation in the claims is actually contrary thereto. It is noted that even a piece of paper in the middle of a stack of similar papers could constitute such a stacking device as recited in the claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "support surface" in line 5 of claim 1 and line 4 of claim 7 lacks proper antecedent basis in the claims.

The recitation "other support structures" in claims 1 and 7 renders the claims indefinite. *In particular*, no support structure has been set forth in the claims, so it is unclear what applicant is referring to when "other" structures are recited.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,284,258 (Genero et al. '258).

Genero et al. '258 disclose a stacking device (20 - see Figure 24) comprising top and bottom planar stacking surfaces comprising a polygon, i.e., rectangle, without holes (the portion in 109 is not considered to be part of the stacking device) having a configuration for supporting at least one article stacked on top of the top parallel planar stacking surface. With respect to the recitation "without assistance from other support structures", it is noted that elements 17 and 12 are considered to define "mounting" structures, not "supporting" structures.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,276,984 (Simmons '984).

Simmons '984 discloses a stacking device (56) comprising top and bottom planar stacking surfaces comprising an ellipse (see Figure 5) without holes having a configuration for supporting *at least one article* (note that the article is 44) stacked on top of the top parallel planar stacking surface. With respect to the recitation "without assistance from other support structures", it is noted that elements 23-26 are considered to define "mounting" structures, not "supporting" structures.

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,161,158 (Lurey '158).

Lurey '158 discloses a stacking system (see Figure 2) comprising a plurality of stacking devices (16), each of the devices (16) comprising top and bottom parallel planar stacking surfaces without holes and having a configuration for supporting at least one article stacked on top of the

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top planar surface wherein at least two of the devices comprise differing surface areas for supporting articles of different sizes (see Figure 2 - right side thereof, whereby the element 16 in the middle of the figure, extends further past the top element 16, and thereby defines a larger area, i.e., a differing size. With respect to the recitation "without assistance from other support structures", it is noted that the additional elements are considered to define "mounting" structures, not "supporting" structures.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Genero et al. '258, alone.

Genero et al. '258 disclose the device as advanced above.

The claim differs from Genero et al. '258 in requiring (a) the surfaces to comprise a machine washable material (claim 4), (b) the surfaces to comprise a heat resistant material, and (c) the surfaces to be configured for direct communication with a wire mesh shelf (claim 6).

*With respect to (a)*, the device shown by Genero et al. '258 is fabricated from plastic.

*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made that plastic constitutes a machine washable material, thereby allowing moisture, dirt, etc. to be cleaned from the surfaces.

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*With respect to (b)*, although Genero et al. '258 do not disclose the material being heat resistant, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the device from such a material for ease in economy and manufacture while decreasing potential damage to the device.

*With respect to (c)*, although Genero et al. '258 do not show use with a wire mesh shelf, the structure of the device shown by Genero et al. '258 is considered to be capable of being used in such a way, thereby increasing storage capabilities and capacity.

### ***Response to Arguments***

Applicant's arguments filed March 3, 2006 have been fully considered but they are not persuasive.

*Firstly*, it is noted that this Office action is deemed non-final since the Examiner inadvertently did not discuss the merits of claim 5 in the previous Office action. Contrary to applicant's statement (at the end of the first paragraph on page 5), claim 5 is not an allowable claim.

In view of the amendment to the claims, wherein the addition of the recitation "without assistance from other support structures" raised a Section 112, 1<sup>st</sup> paragraph rejection (as advanced above), the claims are still rejected under Section 102 and 103, where appropriate, with Genero et al. 258, Simmons '984, and Lurey '158.

With respect to applicant's arguments that the "folding batch towel holder of Genero", "the support shelves of the wine rack" of Simmons, and "the shelf assemblies" of Lurey, cannot function without the vertical support structure, it is noted that these arguments are considered to

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be more limiting than what is actually being claimed and therefore are not commensurate with the scope of the claims. *In particular*, the claims do not recite a "vertical" support structure. *Also*, as advanced above, these elements, mentioned by applicant, have been defined by the examiner to define "mounting" structures not "supporting" structures.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

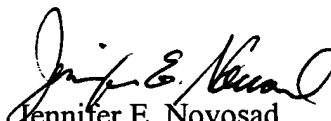
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

March 17, 2006